

California Department of Justice FIREARMS DIVISION Randy Rossi, Director	INFORMATION BULLETIN	
Subject: Firearms Restrictions Protocol Return of Previously Confiscated Firearms	No.: For further information 2004 FD-10	on contact: Firearms Division
	Date: 12/15/04	(916) 263-4887

TO: ALL CALIFORNIA LAW ENFORCEMENT AGENCIES
ALL CALIFORNIA DISTRICT ATTORNEY OFFICES
ALL CALIFORNIA COURTS

INTRODUCTION

The purpose of this bulletin is to inform law enforcement agencies of the implementation of the Firearms Restrictions Protocol pursuant to Penal Code section 12021(i), and new laws and procedures to facilitate the return of a firearm to its owner (commonly known as the Law Enforcement Gun Release process).

FIREARMS RESTRICTION PROTOCOL

This model protocol facilitates the enforcement of restrictions on prohibited firearm ownership including the seizure of firearms. The protocol also includes provisions for providing notice to defendants who are restricted, when/how they are to dispose of firearms, advising them on how to provide proof of the lawful disposition, and how they may obtain possession of seized firearms when legally permitted, once they have provided proof of lawful eligibility. The department formed a committee to develop this protocol. The committee consisted of representatives from:

- ☐ Law enforcement agencies,
- ☐ State Judicial Council,
- ☐ California District Attorney's Association,
- ☐ Los Angeles City Attorney's Office,
- ☐ California State Sheriffs' Association,
- ☐ California Police Chiefs' Association,
- ☐ Peace Officer Standards and Training,
- ☐ California Alliance Against Domestic Violence,
- ☐ Bureau of Alcohol, Tobacco, and Firearms, and
- ☐ Department of Justice.

As a result of those meetings a model protocol was developed. The protocol consists of several forms and checklists that may be used by peace officers, law enforcement agencies, prosecutors, and the courts. The implementation of the Firearms Restrictions Protocol will facilitate the enforcement of existing laws regarding firearms prohibitions. While use of these specific forms and checklists is not mandated by law, strict adherence to the requirements of Penal Code section 12021 relative to firearms restrictions is mandated. The forms and checklists are tools to assist law enforcement agencies and courts with statutory compliance. The protocol consists of:

- ☐ **Peace Officer Quick Reference Guide** - This guide is intended to be a pocket insert card. The Quick Reference Guide provides the officer in the field with the necessary steps regarding the confiscation of firearms that must be taken when responding to a domestic violence or mental health incident.

- ❑ **Receipt and Notice of Rights** - The Receipt and Notice of Rights is to be completed and provided to a subject when firearms are confiscated at a domestic violence, mental health, or other incident. In addition to providing the subject with a receipt for confiscation of the subject's property, this form provides the subject with the statutorily required notices and advisements. It also provides a means for the officer to recommend to the law enforcement and prosecuting agencies that the firearms not be returned to the subject, based on the officer's observations, subject's statements, and concern that the return of the firearms would likely result in endangering public safety.
- ❑ **Agency Checklist** - This checklist is designed to assist a law enforcement agency in determining when a firearm is to be retained or returned to a subject. The checklist provides a series of check boxes and blanks to track the movement of the firearm during court processes and to ensure that firearms are not returned to prohibited persons. Whenever a firearm is reported stolen, lost, found, recovered or under observation, Penal Code section 11108 requires each sheriff or police chief executive or its representative to enter the firearm into Automated Firearms System (AFS). The checklist prompts agency staff to enter the firearm into AFS as statutorily required. **It is vital that this information be entered into the AFS in a timely manner** whenever a firearm is seized, returned, destroyed, or otherwise disposed of. *Only firearms entered as Found, Evidence, or Crime guns will be automatically traced through the ATF e-Trace system.*
- ❑ **Prosecutor Checklist** - This checklist is designed to assist the prosecuting agency in processing firearms prohibitions through the court system. The checklist is a tool to ensure that time lines are met and firearms are entered into AFS.
- ❑ **Court Checklist** - This checklist is designed to assist the court in imposing firearms prohibitions while noticing affected individuals and ensuring that they relinquish firearms in a timely manner. This checklist includes an admonishment regarding the relinquishment of weapons, time lines for relinquishment, and advisements to the court in cases in which the respondent fails to provide proof of relinquishment.

The protocol forms can be downloaded via the DOJ California Law Enforcement Website (CLEW). Agencies are encouraged to modify these documents to make them distinctive to their agency, and make any necessary changes to ensure local policies and laws are incorporated. To obtain editable versions of these forms, please contact the Firearms Division at (916) 263-4868. Maintenance of the protocol documents is the responsibility of each agency and court. However, DOJ will continue developing these forms to further enhance their logical flow, aesthetic value and ease of use.

LAW ENFORCEMENT GUN RELEASE PROCESS

Effective January 1, 2005, section 12021.3 is added to the Penal Code (PC) and states that any person who claims title to any firearm that is in the custody or control of a court or law enforcement agency and who wishes to have the firearm returned to him or her shall make application for a determination by the Department of Justice as to whether he or she is eligible to possess a firearm. Therefore, effective January 1, 2005, prior to law enforcement's return of a firearm to its owner, the individual seeking the return of the firearm must complete and submit to the DOJ a Law Enforcement Gun Release Application. The Department of Justice (DOJ) will no longer conduct Law Enforcement Gun Release checks at the request of law enforcement agencies or courts.

The application is available on line at www.ag.ca.gov/firearms or by calling (916) 263-4887. The application form will instruct the individual how to obtain a firearms eligibility clearance. The fee for a law enforcement gun release eligibility check is \$20 for the first firearm (long gun or handgun) and \$3 for each additional handgun. If the individual had previously reported the firearm(s) as stolen to a law enforcement agency prior to the date the firearm came into custody or control of the agency or court, or within five business days of the firearm(s) being stolen from the owner, subsequent to DOJ verification, the individual would be exempt from

the law enforcement gun release application fees. In that event, please provide documentation to the individual, in a form of your choosing, authorizing the waiver of those fees.

Once the firearm eligibility check has been completed, both the individual and the custodial agency will be notified via U.S. Mail of the eligibility check results. Envelopes containing Law Enforcement Gun Release notices sent to agencies and courts will be stamped 'LAW ENFORCEMENT GUN RELEASE' on the outside of the envelopes to assist agencies in routing the notices to the appropriate section. Agencies/courts should retain a copy of the results notice as proof that the return was either lawfully authorized or disapproved.

In the event the eligibility check is approved, the individual must provide a copy of the DOJ determination notice to the agency. The determination notice will be valid for 30 days from the date of the notice. Prior to releasing the firearm(s), the agency or court must check the Automated Firearms System (AFS) to verify: 1) that none of the firearms being held have been reported stolen; and 2) that any of the firearm(s) that are **handguns** have been reported in AFS in the name of the individual seeking return of the firearm(s). Long guns (rifles and shotguns) will not be reported in AFS. If the agency or court does not have direct access to AFS, please contact the DOJ at (916) 227-3589 for that determination.

If the owner does not wish to obtain possession of the firearm, or is determined ineligible to possess by DOJ, but wants to sell or transfer the firearm, the agency or court must facilitate the sale or transfer of the firearm(s) to a firearms dealer licensed pursuant to PC 12071 by DOJ (provided the firearm(s) is otherwise lawful). It is recommended that the owner submit a No Longer in Possession form to DOJ once the transfer is complete, to disassociate him or herself from the firearm. No Longer in Possession forms are available on the Firearms Division web site at www.ag.ca.gov/firearms, or by calling (916) 263-4887.

PC section 12021.3(g) specifies that notwithstanding any other provision of law, no law enforcement agency or court shall be required to retain a firearm for more than 180 days after the owner has been notified by the agency or court that the firearm has been made available for return. Any unclaimed firearm may be disposed of after the 180-day period has expired. Additionally, if authorized by regulation, ordinance or resolution, an agency or court may charge a fee relative to the costs associated with the seizure, storage, and disposition of the firearm(s). DOJ neither sets nor regulates this fee.

If you have any questions, please do not hesitate to contact the Firearms Division, Firearm Information Services Section, at (916) 263-4887.

Sincerely,

A handwritten signature in black ink, appearing to read 'Randy Rossi', with a large, stylized loop at the end.

RANDY ROSSI, Director
Firearms Division

For BILL LOCKYER
Attorney General

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